elements of a sale. *Gillam* v. *State,* 47 Ark. 555, 2 S. W. 185; *Hubby* v. *State,* 111 Ga. 842, 36 S. E. 301.

Statutes as clearly penal as that involved in the principal case are to be construed strictly. Merely because an act contravenes the policy of the statute it is not within the statute unless it comes conclusively within its wording. *Seigel* v. *People,* 106 Ill. 94; *Coker* v. *State,* 91 Ala. 94. 8 So. 875. The words exchange, barter and loan have a different legal import from the word sale. *Read* v. *Hutchinson,* 3 Camp. 352; *Harrison* v. *Luke,* 14 Mees & W. 139; *Williamson* v. *Berry,* 8 How. 540; *Mitchell* v. *Gile,* 12 N. H. 390. It would seem, therefore, that the word sale in such statutes cannot be construed to mean something different from its ordinary legal import. *Skinner* v. *State,* 97 Ga. 690, 25 S. E. 364.

MORTGAGES—NEGOTIABILITY WHEN SECURING NEGOTIABLE PAPER.—An action to set aside a conveyance of real estate on the ground of fraud was brought against the grantee and a mortgagee who had taken the encumbrance with notice of the fraud. The assignee of the mortgage and a negotiable note which it secured intervened. *Held,* the intervener, by taking the note and mortgage in good faith before maturity and for valuable consideration, took the mortgage as well as the note free from antecedent equities. *Robertson* v. *United States Live Stock Co.* (Iowa), 145 N. W. 535. See NOTES, p. 622.

NEGLIGENCE—OF BAILEE AS IMPUTABLE TO THE BAILOR.—The concurrent negligence of the bailee of a horse and the defendant resulted in the death of the horse. The bailor attempted to recover from the defendant. *Held,* the negligence of the bailee is not imputable to the bailor, and he may recover. *Spelman* v. *Delano* (Mo.), 163 S. W. 300.

There is a conflict of authority as to whether the contributory negligence of the bailee is imputable to the bailor in an action by the latter against a third party for negligent injury to the subject of the bailment. A third party, injured by the bailee's negligent use of the subject of the bailment cannot recover from the bailor. *Herlihy* v. *Smith,* 116 Mass. 265; *Bard* v. *Yohn,* 26 Pa. St. 482. Working from that basis, the court in the principal case drew the conclusion that the bailee's negligence should not be imputed to the bailor when the latter attempted to recover. It is certain that this decision is in accordance with the weight of modern authority. *New Jersey Electric Ry. Co.* v. *New York, etc., R. R. Co.,* 61 N. J. L. 287, 41 Atl. 1116, 43 L. R. A. 849; *Sea Ins. Co.* v. *Vicksburg, etc., Ry. Co.,* 86 C. C. A. 544, 159 Fed. 676, 17 L. R. A. (N. S.) 925; *Gibson* v. *Bessemer, etc., R. R. Co.,* 226 Pa. St. 198, 75 Atl. 194, 27 L. R. A. (N. S.) 689. *Contra, Texas, etc., Ry., Co.* v. *Tankersley,* 63 Tex. 57; *Illinois Central R. R. Co.* v. *Sims,* 77 Miss. 325, 27 So. 527, 49 L. R. A. 322. If the bailee, when negligent was engaged in a joint enterprise with the bailor, his negligence should be imputed. *Puterbalgh* v. *Reasor,* 9 Ohio St. 484. These cases involving the question considered in the principal case should be distinguished from the cases where the bailee is also the agent of the bailor as a carrier of goods, where the latter's negligence is very properly imputed to the bailor. This arises from the privity of con-

tract existing between principal and agent. *Simpson* v. *Hand*, 6 Whart. (Pa.) 311, 36 Am. Dec. 231. In *Texas, etc.. Ry. Co.* v. *Tankersley, supra,* the court seemed to confuse the relation existing between bailor and bailee with that existing between principal and agent. It would seem that the principal case was correctly decided since the obnoxious doctrine of identification which arose in England has been overruled. *Mills* v. *Armstrong.* L. R. 12 Prob. Div. 58, overruling *Thorogood* v. *Bryan,* 8 C. B. 115. The doctrine of identification, when there is no privity of contract giving one party control over the other, has been disapproved in this country. *Little* v. *Hackett,* 116 U. S. 366. There is no common interest between bailor and bailee or no privity of contract giving the bailor control over the bailee and the former should not be responsible for the latter's negligence.

PARTY WALLS—COVENANT TO PAY COST OF ERECTION.—The assignor of the plaintiff and the defendant executed a contract whereby the defendant was to erect and pay for a party wall on the boundary-line beween their respective adjoining lots. The contract contained covenants stipulating that it was to be binding upon the assigns of each party and was to be a covenant running with the land. The plaintiff's assignor covenanted to pay one-half the cost of the erection of the party wall. *Held,* The covenant does not run with the land. *Hill* v. *City of Huron* (S. D.), 145 N. W. 570.

Much conflict of authority and nicety of distinction exists in the decision of questions similar to that involved in the principal case. The following courts are in accord with the principal case in holding that the covenant to pay the value of one half the wall when used by the non-builder is collateral to the land and hence personal to the original contracting parties, despite the fact that the parties expressly stipulate that the contractual covenants shall run with the land. *Bell* v. *Bronson,* 17 Pa. St. 363; *Crawford* v. *Krollpfeiffer,* 195 N. Y. 185, 88 N. E. 29; *Cook* v. *Paul,* 4 Neb. 93, 93 N. W. 430, 66 L. R. A. 673; *Nalle* v. *Paggi,* 81 Tex. 201, 16 S. W. 932, 13 L. R. A. 50. And under the peculiar wording and construction of the party wall contract, a similar result was reached by the Illinois court. *Gibson* v. *Holden,* 115 Ill. 199, 3 N. E. 282, 56 Am. Rep. 146. So likewise the covenant to pay ceases to run when the builder expressly reserves to himself, in his sale of the lot built upon, his right of recovery for the use of the wall. *Pillsbury* v. *Morris,* 56 Minn. 492, 56 N. W. 170. The courts taking the view that such covenants of payment in party wall contracts do run with the land base their decisions on various grounds. Some hold that the original contract gives the builder a title or right of property in the wall, which passes out of him only by the use of the wall by another. Hence, they say, there is in effect a sale of the wall by the builder, to the user, whoever he may be, who thereupon becomes personally liable as a purchaser of half the wall. *Tomblin* v. *Fish.* 18 Ill. App. 439; *Richardson* v. *Tobey,* 121 Mass. 457. Some hold that one who buys from the non-builder with notice of the original agreement stands in the shoes of his grantor and takes the land subject to the burdens, as well as the bene-